

JENNIFER LEE TAYLOR (CA SBN 161368)  
JTaylor@mofo.com  
JOYCE LIOU (CA SBN 277720)  
JLiou@mofo.com  
NICHOLAS HERRERA (CA SBN 301992)  
NHerrera@mofo.com  
RYAN ROMAIN (CA SBN 319603)  
RRomain@mofo.com  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: 415.268.7000  
Facsimile: 415.268.7522

Attorneys for Plaintiff  
LAMBDA LABS, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

LAMBDA LABS, INC.,

Plaintiff,

v.

LAMBDA, INC.,

Defendant.

Case No. 4:19-cv-04060-JST (TSH)

**LAMBDA LABS, INC.'S MOTION TO  
COMPEL LAMBDA SCHOOL  
FINANCIAL DOCUMENTS**

Judge: Magistrate Judge Thomas S. Hixson

**SUBMITTED UNDER SEAL  
PUBLIC VERSION**

### **Lambda's Motion to Compel<sup>1</sup>**

Plaintiff Lambda Labs, Inc. (“Lambda”) moves to compel documents concerning Defendant Lambda, Inc.’s (“Lambda School”) finances. Lambda seeks disgorgement of Lambda School’s profits, but Lambda School has refused to produce documents necessary to calculate those profits. Lambda moves to compel the production of documents responsive to its RFP Nos. 64, 172-173, 176-182, 184, 186-190, 194-195, and 224,<sup>2</sup> or if Lambda School contends it has already complied, the Court should order it to identify responsive documents by Bates number.<sup>3</sup> Expert reports are due on April 2 (ECF No. 111), so Lambda seeks production by March 12.

#### **1. Financial statements, revenues, and costs (RFP Nos. 176-179, 184, 189, and 190)**

Lambda seeks documents sufficient to show Lambda School’s revenues, costs, and profits: namely, its “audited financial statements (including but not limited to, balance sheets, income statements, and cash flow statements)” (RFP No. 176), “monthly profit and loss statements showing line-item details” (RFP No. 177), its “monthly revenue broken out by revenue source” (RFP No. 178), and its “income from tuition or from other sources that has been earned, but not yet received” (RFP No. 179). Lambda seeks these documents from Lambda School’s date of incorporation to present. The cursory documents Lambda School has produced (Ex. 6) are woefully inadequate.<sup>4</sup> They appear to be printouts of hand-made spreadsheets that cover only certain years (2017-2019, not the company’s full lifespan from 2016 to present), and they lack basic details, including any itemization of revenue. These documents are relevant to

---

<sup>1</sup> Lambda School refused to provide its portion of a joint submission on this motion. (Ex. 8.)

<sup>2</sup> (See Ex. 1, Lambda School’s Responses to Lambda’s Second Set of Requests for Production, RFP No. 64; Ex. 2, Lambda School’s Responses to Lambda’s Fourth Set of Requests for Production, RFP Nos. 172 and 173; Ex. 3, Lambda School’s Responses to Lambda’s Fifth Set of Requests for Production, RFP Nos. 176-182, 184, 186-190, and 194-195; Ex. 4, Lambda School’s Responses to Lambda’s Sixth Set of Requests for Production, RFP No. 224.)

<sup>3</sup> Lambda School said this afternoon that it would produce additional documents responsive to certain requests, or that it had already produced responsive documents. That is too little too late. Lambda has been seeking these documents since December, and has received multiple assurances from Lambda School that additional documents concerning its finances would be produced. Yet, its production relating to its finances remains woefully deficient, thus necessitating this motion. Indeed, Lambda School’s representation this afternoon that eight previously produced documents fulfill its obligations with respect to four of the Requests at issue provides an indication of Lambda School’s likely future productions (Ex. 5), as those documents contain only high-level information, and are not sufficient to meet Lambda’s needs. Because today is the deadline to file motions to compel, Lambda requires a court order compelling Lambda School to produce the documents that are the subject of this motion.

<sup>4</sup> Lambda School claimed in meet and confer that it had no other financial documents. After Lambda threatened to bring this motion, Lambda School then produced its audited financial statements for 2018 and 2019—but no other years, and none of the other documents sought here.

calculate Lambda School's profits for purposes of disgorgement, and they can be easily exported from its QuickBooks system (or any other platform it currently uses) without any burden.

Lambda also seeks documents sufficient to show revenue from investments and other sources in response to RFP Nos. 178 and 189. Lambda School CEO Austen Allred testified at deposition that [REDACTED] (Ex. 7 (Allred Dep. 143:21-24)), that [REDACTED] (*id.* at 154:11-155:17, 160:18-161:3), that [REDACTED] (*id.* at 148:13-150:4), and that [REDACTED] (*id.* at 157:15-158:7). But Lambda School produced *no* documents showing investments it received, the timing and form in which they were received, or any other information about such investments. These key details are required to evaluate Lambda School's profits and can be obtained with little burden. Lambda also seeks documents sufficient to show itemized revenue from other sources besides investments, namely "student/customer-level transaction information . . . including the nature of the sale (tuition, merchandise, consulting), distribution channel, date sold, revenue, cost of goods sold and gross profit by student/customer" (RFP No. 189), because Lambda School also receives revenue from direct tuition payments from some students, merchandise sales on its website, and consulting services under its Lambda Studios and Lambda Fellows programs. Lambda seeks to quantify these and any other revenue sources.

Lambda further seeks documents sufficient to show "all costs [Lambda School] has incurred, broken down by cost" (RFP No. 184). Such documents are relevant to the extent Lambda School seeks to deduct costs for purposes of reducing an award of its revenues under 15 U.S.C. § 1117, as Lambda needs to be able to evaluate any deductions claimed by Lambda School. Yet Lambda has received *no* documents reflecting Lambda School's costs. This request includes documents that show per-student costs, which Mr. Allred confirms [REDACTED] (*Id.* at 177:1-181:16). Lambda further seeks "all presentations, discussions, and/or meeting minutes" from Lambda School's board of director meetings, as Mr. Allred confirmed that [REDACTED] (RFP No. 190.)

## **2. Financial projections and representations to investors (RFP Nos. 194-195 and 224)**

Lambda seeks "any projections, forecasts, or pro formas demonstrating [Lambda School's] expected future sales and profits" (RFP No. 195) because such documents bear on Lambda School's profits, which Lambda seeks to disgorge. Such documents should be easily collected, especially because Lambda School sought another round of investment only eight months ago. Further, Mr. Allred [REDACTED] (Ex. 7 (Allred Dep. 140:10-142:3).) Yet, Lambda

---

<sup>5</sup> Income share agreements are "a form of deferred tuition" under which students agree to pay a percentage of their future income to Lambda School. (See <https://lambdaschool.com/tuition/isa>.)



School did *not* produce a single document with a financial projection, not one given to potential funders, nor [REDACTED].

Lambda further seeks documents to show Lambda School's presentations and representations to its investors, including documents sufficient to show "any analysis, valuations, presentation materials, documents and things prepared for, in support of, or presented to potential investors for [Lambda School's] funding rounds" (RFP No. 194), and the final versions of any "slide decks, presentations, pitches, or reports prepared for actual or potential investors that discuss [Lambda School's] business or marketing plans" (RFP No. 224). Mr. Allred testified that [REDACTED]

[REDACTED] (*Id.* at 144:3-145:9). *None* of these documents were produced although they are highly likely to discuss Lambda School's profitability, which is relevant to disgorgement. The final versions of any such analysis, reports, or other listed materials prepared for investors should again be easy to collect from Lambda School's files.

### 3. Income share agreements (RFP Nos. 64, 172-173, 180-182, 187-188)

Lambda seeks documents sufficient to show Lambda School's "revenue on a monthly basis from selling income share agreements" (RFP No. 173), as well as its "financial analysis and accounting related to securitization and/or sale" of ISAs (RFP No. 187), and its "loans or indebtedness incurred by [Lambda School] that has been secured by Income Sharing Agreements, including analysis of total and expected revenue" (RFP No. 188). Mr. Allred testified that [REDACTED]

[REDACTED] (Ex. 7 (Allred Dep. 127:6-13, 151:3-152:13).) But Lambda School has produced *no* documents to quantify the revenue it received from ISAs, which is crucial to evaluate its profits for disgorgement. Lambda further seeks copies of Lambda School's contracts for funding ISAs, which Mr. Allred testified [REDACTED]

[REDACTED] (Ex. 7 (Allred Dep. 158:8-159:3)). This is a discrete set of documents that contain key details to evaluate profits and are responsive to Lambda's RFP No. 64, which requests such contracts, as well as RFP No. 172, which seeks documents to identify Lambda School's "process for bundling and selling income share agreements to investors."

Lambda also seeks documents to show Lambda School's expected future revenues from ISA sales, including its "financial analysis and accounting for [its] Income Share or Sharing Agreements, including analysis of total actual and expected revenue." (RFP No. 182.) Mr. Allred testified that [REDACTED]

[REDACTED] (Ex. 7 (Allred Dep. 136:1-11, 139:22-142:6).) This request seeks [REDACTED], as well as any other "financial analysis or accounting" that is conducted regarding ISAs, which are relevant to evaluate profits and expected profits. Lambda further seeks documents that show numerical inputs that must go into [REDACTED] to calculate profits, namely documents sufficient to show the number of total individuals (RFP No. 180) and current individuals (RFP No. 181) enrolled in the Lambda School program, which will determine its total profits from ISA sales.

**4. Website metrics (RFP No. 186)**

Finally, Lambda seeks documents sufficient to show “website metrics and tracked key performance indicators” for Lambda School’s website, including “website traffic, traffic sources (including, but not limited to, organic search traffic, campaign traffic, referral, and direct traffic), conversion rate by traffic source, and any other tracked metrics.” (RFP No. 186.) Such documents are relevant to evaluate incremental increases to Lambda School’s profits based on its infringement—i.e., to show that Lambda School has profited more over time from its infringement. Lambda School sought such documents from Lambda and Lambda agreed to produce them. Lambda School should do the same.

Dated: March 5, 2021

JENNIFER LEE TAYLOR  
JOYCE LIOU  
NICHOLAS HERRERA  
RYAN ROMAIN  
MORRISON & FOERSTER LLP

By: /s/ Jennifer Lee Taylor  
JENNIFER LEE TAYLOR

Attorneys for Plaintiff  
LAMBDA LABS, INC.